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DO Group Systems, Inc. and Southern Council of Industrial Workers and Ship, Mill and Industrial Local Union 2892, affiliated with the United Brotherhood of Carpenters and Joiners of America. Case 26–CA–22210

June 29, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and first and second amended charges filed by the Union on September 1, October 31, and December 27, 2005, respectively, the Acting General Counsel issued the complaint on December 29, 2005 against DO Group Systems, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On March 10, 2006, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on March 15, 2006, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by January 12, 2006, all the allegations in the complaint could be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated January 20, 2006, notified the Respondent that unless an answer was received by February 3, 2006, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Arkansas corporation with an office and place of business in Marked Tree, Arkansas, was engaged in the manufacture of office furniture. During the 12-month period ending July 1, 2005, the Respondent, in conducting its business operations described above, sold and shipped from its Marked Tree, Arkansas facility goods valued in excess of \$50,000 directly to points located outside the State of Arkansas, and purchased and received at its Marked Tree, Arkansas facility goods valued in excess of \$50,000 directly from points located outside the State of Arkansas.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Southern Council of Industrial Workers and Ship, Mill and Industrial Local Union 2892, affiliated with the United Brotherhood of Carpenters and Joiners of America (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and/or agents of the Respondent within the meaning of Section 2(13) of the Act:

Todd R. Bridges	-	President
Timothy Dean	-	Secretary
Thomas Hurst	-	Controller

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed at the Respondent's Marked Tree, Arkansas plant, excluding all office clerical employees, professional employees, guards and supervisors as defined by the Act.

Since about the 1960s and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent being effective from November 1, 2003 through April 30, 2005.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About April 2005, the Respondent, by Todd R. Bridges, told the Union that it was unwilling to enter into contract negotiations due to its financial inability to pay.

On about April 18, 2005, the Union, by letter, requested that the Respondent furnish the Union with proof of the Respondent's inability to pay to justify its refusal to enter into contract negotiations.

On about May 27, 2005, the Union orally requested that the Respondent furnish the Union with the following information:

A list showing names, addresses, phone numbers, classifications, and wage rates of all employees, along with fringe benefits currently received and their cost.

The information requested by the Union on April 18 and May 27, 2005 is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about April 18, 2005, the Respondent has failed and refused to furnish the Union with the requested information concerning the Respondent's alleged inability to pay that was asserted as the reason for its refusal to enter into contract negotiations.

Since about May 27, 2005, the Respondent has failed and refused to furnish the Union with the requested information regarding employees' names, addresses, phone numbers, classifications, and compensation.

Between March and June 2005, the Respondent failed to remit union dues collected pursuant to the collective-bargaining agreement.

Since about March 25, 2005, the Respondent has failed to pay its employees holiday pay for Good Friday 2005 pursuant to the collective-bargaining agreement.

Since about May 31, 2005, the Respondent has failed to pay its employees holiday pay for Memorial Day 2005 pursuant to the collective-bargaining agreement.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

About June 2005, the Respondent closed its Marked Tree, Arkansas facility without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the effects of the closing. This subject relates to wages, hours, and other terms and conditions of employment of the unit, and is a mandatory subject for the purposes of collective bargaining.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair

labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the Respondent's decision to close its Marked Tree, Arkansas facility, we shall order the Respondent to bargain with the Union, on request, about the effects of its decision. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violation and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).¹

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on the unit employees; (2) a bona fide impasse in bargaining;

¹ See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). The complaint and motion do not specify whether the Respondent laid off the unit employees. Thus, we do not know whether, or to what extent, the refusal to bargain about effects had an impact on the unit employees. In these circumstances, we shall permit the Respondent to contest the appropriateness of a *Transmarine* backpay remedy at the compliance stage. See, e.g., *Fabricating Engineers, Inc.*, 341 NLRB 10, 11 fn. 1 (2004). *Corbin, Ltd.*, 340 NLRB 1001, 1002 fn. 2 (2003).

(3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent closed its facility to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) since March 2005, by failing and refusing to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to pay holiday pay for Good Friday and Memorial Day 2005, we shall order the Respondent to make whole its unit employees for any loss of earnings and other benefits they have suffered as a result. All payments to the unit employees shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, having found that the Respondent has failed since March 2005 to remit to the Union the dues deducted from the paychecks of unit employees, we shall order the Respondent to forward such withheld dues to the Union as required by the November 1, 2003 through April 30, 2005 collective-bargaining agreement, with interest, as prescribed in *New Horizons for the Retarded*, supra.

In addition, having found that the Respondent has failed to provide the Union with relevant and necessary information requested on April 18 and May 27, 2005, we shall order the Respondent to furnish the Union with the requested information.

Finally, in view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of the unit employees who were employed by the Respondent since March 2005, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, DO Group Systems, Inc., Marked Tree, Arkansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Southern Council of Industrial Workers and Ship, Mill and Industrial Local 2892, affiliated with the United Brotherhood of Carpenters and Joiners of America, as the exclusive collective-bargaining representative of the employees in the unit set forth below, about the effects of its decision to close its Marked Tree, Arkansas facility:

All production and maintenance employees employed at the Respondent's Marked Tree, Arkansas plant, excluding all office clerical employees, professional employees, guards and supervisors as defined by the Act.

(b) Failing to continue in effect all the terms and conditions of its collective-bargaining agreement with the Union by failing to pay holiday pay for Good Friday 2005 and Memorial Day 2005.

(c) Failing to remit to the Union dues that have been deducted from the employees' paychecks pursuant to the terms of the collective-bargaining agreement.

(d) Failing and refusing to provide the Union with information that is necessary for and relevant to the Union's performance of its duties as the exclusive bargaining representative of the unit employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union concerning the effects on unit employees of the Respondent's decision to close its Marked Tree, Arkansas facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision.

(c) Make unit employees whole for any loss of earnings and other benefits by paying holiday pay for Good Friday and Memorial Day 2005, pursuant to the collective-bargaining agreement, with interest.

(d) Remit to the Union dues that have been deducted from employees' earnings, with interest.

(e) Provide the Union with the information it requested by letter about April 18, 2005 and orally on May 27, 2005.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place desig-

nated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"² to all unit employees who were employed by the Respondent since March 2005.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 29, 2006

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

MAILED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain in good faith with Southern Council of Industrial Workers and Ship, Mill and Industrial Local Union 2892, affiliated with the United Brotherhood of Carpenters and Joiners of America, as the exclusive collective-bargaining representative of our employees in the following unit, about the effects of our decision to close our Marked Tree, Arkansas facility. The unit is:

All production and maintenance employees employed at our Marked Tree, Arkansas plant, excluding all office clerical employees, professional employees, guards and supervisors as defined by the Act.

WE WILL NOT fail to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to pay holiday pay for Good Friday 2005 and Memorial Day 2005.

WE WILL NOT fail to remit to the Union dues that have been deducted from the employees' paychecks pursuant to the terms of the collective-bargaining agreement.

WE WILL NOT fail and refuse to provide the Union with information that is necessary for and relevant to the Union's performance of its duties as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning the effects on unit employees of our decision to close our Marked Tree, Arkansas facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay the unit employees limited backpay in connection with our failure to bargain over the effects of our decision to close our Marked Tree, Arkansas facility, with interest.

WE WILL make the unit employees whole for any loss of earnings and other benefits by paying the holiday pay for Good Friday 2005 and Memorial Day 2005 that has not been paid, with interest.

WE WILL remit to the Union the dues that have been deducted from employees' earnings, with interest.

WE WILL provide the Union with the information it requested on April 18 and May 27, 2005.

DO GROUP SYSTEMS, INC.